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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Reports submitted by States parties under article VII of the Convention

Addendum

IRAQ[1/]

[11 November 1985]

1/ The initial, second and third reports submitted by the Government of Iraq (E/CN.4/1353/Add.3, E/CN.4/1505/Add.5 and E/CN.4/1983/24/Add.10) were considered by the Group of Three at its 1980, 1982 and 1983 sessions respectively.

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This report is based on the guidelines adopted in 1978 by the Group of Three assigned to study the reports of States and also on Commission on Human Rights resolution 1985/10 of 26 February 1985.

I. The legal status of the crime of apartheid and of organizations that advocate it

(a) In affirmation of the fact that it regards apartheid as a crime against humanity, Iraq has acceded to the International Convention on the Suppression and Punishment of the Crime of Apartheid, article I of which designates apartheid as a crime against humanity, a challenge to the imperative rules of international law, a violation of the purposes and principles of the Charter of the United Nations, and a threat to international peace and security.

Iraq shares the view expressed by the Commission on Human Rights in its resolution 1985/10 that the crime of apartheid is a form of genocide punishable under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, which was promulgated by the General Assembly of the United Nations on 9 December 1948 and has been ratified by Iraq. In fact, the crime of apartheid, as defined in article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid, has much in common with the crime of genocide as defined in article II of the Convention on the Prevention and Punishment of the Crime of Genocide.

Iraq's view of apartheid as a crime against humanity has been emphasized in all international forums and conferences, particularly at the recent Second World Conference to Combat Racism and Racial Discrimination held at Geneva in August 1983, in which Iraq participated effectively on the Drafting Committee. Iraq has also voted at all sessions of the General Assembly of the United Nations in favour of regarding apartheid as a crime against humanity.

(b) Iraq regards all organizations and individuals advocating racial discrimination as perpetrators of offences punishable under the following articles of the Penal Code:

> Article 200: "Any person who provokes, propagates or stirs up confessional or sectarian bigotry, incites others to engage in intercommunal or inter-racial conflict, or arouses feelings of hatred and animosity among the people of Iraq shall be punished by imprisonment for a period of up to seven years".
>
> Article 203: "Any person who provides financial, material or moral support with a view to encouraging others to commit any of the offences specified in article 200 shall be punished by imprisonment for a period of up to seven years".

The illegal nature of racist organizations

The establishment of a racist organization is an illegal act punishable under article 204 of the Penal Code, which stipulates:

> "Any person in Iraq who establishes any association, body or organization attempting to mobilize or propagate confessional bigotry, who incites others to engage in intercommunal conflict or who arouses feelings of hatred and animosity among the population of Iraq shall be punished by imprisonment for a period of up to 15 years, together with a fine not exceeding 1,000 dinars; any person who joins such organization or body shall be punished by imprisonment for a period of up to 10 years".

Prohibition of the practice of racist policies by public or local authorities

The prohibition and punishment of the encouragement of racism apolies to all individuals and bodies corporate, including the State institutions, public and local authorities and the information media, all of which are governed by the authoritative provisions of the Constitution and legislation of Iraq.

II. Info nation concerning the punishment and extradition of persons guilty of the crime of apartheid

(a) As already mentioned in the first section of this report, racial discrimination, which obviously includes apartheid, is regarded as a punishable offence.

In the event of the occurrence of an act of racial discrimination, the victim or injured party may be an individual, a group or an entire community.

In such a case, criminal proceedings would be instituted, in accordance with article 1 of the Code of Criminal Procedure promulgated in Act No. 23 of 1971, through the submission of a verbal or written complaint to an examining magistrate, an investigating official, a police officer or any member of the judiciary by the injured party, the latter's legal representative or any person having knowledge of the occurrence of the act. Alternatively, proceedings may be instituted on the basis of information received by the Department of Public Prosecutions.

Under article 2 of the above-mentioned Act, such criminal proceedings cannot be halted, suspended or waived except in the circumstances specified in the Act.

It should be noted that, in Iraq, racial discrimination is not an offence in which a complaint must be submitted by the victim before criminal proceedings can be instituted against the offender. Such offences, an exhaustive list of which is contained in article 3 of the Code of Criminal Procedure, do not include racial discrimination.

In accordance with article 10 of the Code, once public criminal proceedings have been instituted, any person who has suffered direct material or moral damage as a result of any offence, including racial discrimination, is entitled to file a civil suit against the party accused of, or held liable for, the offence.

Under article 9, paragraph 1, of the Code of Criminal Procedure, the submission of a complaint is, in itself, equivalent to the filing of a civil suit.

Under article 224, paragraph (a), of the Code of Criminal Procedure, the judgement delivered by the criminal court hearing the case must award compensation to the party which has suffered material or moral damage.

If the offence has been committed by way of publication in a newspaper, the court may, at the request of the Department of Public Prosecutions or the injured party, order the publication of the judgement or a summary thereof in the same place in the newspaper concerned. In the event of a newspaper being convicted of an offence, the court may order it to suspend publication for a period of up to three months.

Judgements delivered by the courts are executed in accordance with the regulations laid down in chapter V of the Code of Criminal Procedure (arts. 280 et seq.) and civil damages are awarded in the manner prescribed by law.

With regard to the Convention forming the subject of this report, it should be noted that the jurisdiction of the Iraqi courts covers offences of racial discrimination committed not only inside but outside Iraq. This is consistent with article V of the Convention.

(b) The provisions referred to in section (a) above apply to individuals, organizations and companies, whose officials are punishable for any crimes against humanity that they may commit. In this connection, we wish to point out that Iraq's conception of the liability of multinational corporations is in keeping with paragraphs 12 and 14 of Commission on Human Rights resolution 1985/10 and paragraphs 38 and 39 of the report of the Group of Three for the year 1985.

Iraq believes that the apartheid system in South Africa is being perpetuated by the following factors:

1. The relations that are being maintained in the economic, scientific and atomic fields between South Africa and various States, including, in particular, the Zionist entity, since Israel persists in maintaining relations with South Africa in spite of the categorical disapproval voiced by the international community.

2. The manner in which transnational corporations are helping to perpetuate the racist régime in South Africa. From the legal standpoint, therefore, these corporations should be regarded as aiding and abetting commission of the crime of apartheid and, consequently, their officials should be prosecuted.

(c) Iraq regards the provisions of the International Convention on the Suppression and Punishment of the Crime of Apartheid as part of its national legislation. Accordingly, Iraq would respond favourably to any application for the extradition of a person accused of committing the crime of apartheid to any national judicial authority in any State party to the Convention or to an international tribunal established under the provisions of the Convention.

III. The role of legislation and the information media in the suppression of apartheid

(a) Details concerning legislative measures for the implementation of article IV (a) of the Convention have already been given in section I of this report, which contains the texts of all the legislative enactments under which the crime of apartheid is punishable. These enactments are designed to prevent the commission of any act of racial discrimination or segregation.

(b) Iraq attaches particular importance to the role played by information, culture and education in the suppression of racism.

1. In the educational sphere

With regard to paragraph 35 of the report of the Group of Three for the year 1985, we wish to make it clear that all Iraqi educational curricula, particularly in subjects such as civics, history, geography and literature, are based on a cultural and humanitarian approach that opposes and precludes racial discrimination in any of the subjects that are taught, with a view to bringing up a generation that will be free from the effects of the colonial eras during which racist tendencies were encouraged. Civics and history are subjects in which special attention is drawn to the question of racism, the threat that it poses to the international community and the manner in which it jeopardizes international peace and security since, by its very nature, it constitutes the worst form of colonialism.

2. In the cultural sphere

Iraq regards culture as a means of civilized dialogue among peoples on the basis of the fundamental principle of opposition to racism and support for the equality of peoples and their right to self-determination.

Accordingly, Act No. 94 of 1981, under which the Ministry of Culture and Information was established, stipulates that the objectives of the Ministry are: to revive the Islamic heritage; to foster knowledge of Arab civilization, including its origins, values, achievements and influence on other human civilizations; and to combat colonialist, Zionist, racist, reactionary, capitalist and chauvinistic tendencies in the cultural and artistic fields.

3. In the information sphere

Iraq regards information as an instrument for combating racism and promoting dialogue among peoples. The dissemination of racist ideology constitutes a punishable offence and, consequently, the press is not permitted to publish such ideology.

This policy is in keeping with the UNESCO Declaration on the role of information and culture in the prevention of racial discrimination.

Iraq firmly supports the international endeavours that have been made to strengthen the role of the information media in the struggle against racism through the establishment of a new international information order to replace the present order, which is impeding that struggle.

The information media provide news concerning the struggle against apartheid and express support for liberation movements throughout the world. The press publishes articles on occasions designated by the United Nations to commemorate the struggle against racial discrimination and apartheid.

The information media publish the texts of international conventions on the prevention of racial discrimination, such as the International Convention on the Suppression and Punishment of the Crime of Apartheid, in order to acquaint the public with the evil nature of racism and apartheid and encourage public participation in the international campaign to combat these phenomena.

IV. Implementation of the Security Council resolutions against the racist régime in South Africa

Iraq has diligently implemented, and is continuing to implement, all Security Council resolutions concerning the boycott of the racist régime in South Africa, with which Iraq maintains no diplomatic, economic, political or cultural relations.

Being strongly opposed to the minority régime in South Africa, Iraq does not permit its petroleum to be exported to that country and forbids Iraqi ships to use South African ports.

Iraq strongly condemns all forms of co-operation with racist régimes. We are referring primarily to the military co-operation, particularly in the nuclear field, between South Africa and the Zionist entity, which has been condemned by the United Nations in a number of resolutions.

Iraq has consistently opposed South Africa's use of mercenaries, whom it regards as common criminals and accomplices in the crime of apartheid. Those mercenaries should therefore be prosecuted before the judicial bodies referred to in the International Convention on the Suppression and Punishment of the Crime of Apartheid.

V. Iraq's support for African liberation movements

In accordance with its freedom-loving, humanitarian ideology, Iraq regards itself as an integral part of the world-wide liberation movement.

Our country is providing the African liberation movements with every form of material, moral and political support in order to enable the African peoples to exercise their right to self-determination and independence and put an end to colonial white minority rule in South Africa. In this connection, Iraq is diligently implementing all United Nations resolutions concerning support for African liberation movements.